

EXHIBIT E

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. WILLIAM PERRY

PART

23

Justice

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INDEX NO. 154347/2022

KALPANA PATEL M.D.,

MOTION DATE 05/19/2022

Petitioner,

MOTION SEQ. NO. 001

- v -

MARY BASSETT M.D., NYS DEPT. OF HEALTH, PAULA
BREEN, NYS OFFICE OF PROF. MED. CONDUCT, NYS
BOARD OF PROFESSIONAL MEDICAL CONDUCT,
MICHAEL JACUBOWSKI M.D, JEFFREY CONKLIN ESQ.

**DECISION + ORDER ON
MOTION**

Respondent.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

were read on this motion to/for

ARTICLE 78 (BODY OR OFFICER)


For the reasons stated on the record and based upon the following, the motion is granted.

Public Health Law ("PHL") Sec. 230(10)(k) provides as follows:

(k) The executive secretary of the board of the Office of Professional Misconduct ("OPMC") with the specific approval of a committee on professional conduct of the board shall have the power to issue subpoenas requiring persons to appear before the board and be examined with reference to a matter within the scope of the inquiry or the investigation being conducted by the board and produce books, papers, records or documents pertaining thereto.

In the case at bar, the subpoena issued was not signed by the executive secretary of the board as required by the statute. It was signed by counsel to the Board, who does not possess the authority to issue subpoenas or control investigations.

The subpoena is therefore facially insufficient, and thus the petition is dismissed.

<u>8/4/2022</u>			
DATE		WILLIAM PERRY, J.S.C.	
CHECK ONE:	<input checked="" type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE